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COMMITTEE AGAINST TORTURE

Fourteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 213th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 26 April 1995, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.213/Add.1

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GE.95-12545 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Mauritius (continued) (CAT/C/24/Add.1 and 3)

1. At the invitation of the Chairman, Mr. Boolell, Mr. Dedons, Mr. Curé and Mr. Munisemy (Mauritius) took seats at the Committee table.

2. Mr. BOOLELL (Mauritius), replying to questions raised by members of the Committee at the previous meeting, said that he would try to group his answers under the following headings: the question of the incorporation of the Convention into domestic law; a concrete definition of torture and its interpretation in the context of Mauritian law; a compensation scheme for victims of torture; the education of medical officers; pre-trial detention; the death penalty; and, very important, the question how a complaint of torture against a person in authority would be pursued.

3. The Convention had not been incorporated into Mauritian domestic law but, as had been pointed out in the report, it could be invoked before a court, where it would be of a persuasive character. Various judicial pronouncements by the Supreme Court had been to that effect. He would like to make it quite clear that torture was in fact covered by the constitutional provisions of Mauritius. However, there were shortcomings in respect of the definition of torture under section 7 of the Constitution and corresponding sections of the Criminal Code in so far as there was no provision which would cover mental torture. That lacuna was currently under consideration and would obviously have to be remedied in view of the contractual obligations of Mauritius vis-à-vis international institutions.

4. The Country Rapporteur had asked a question regarding correctional educational youth centres. Under the Reform Institutions Act, mentioned in the report, the prosecution process for juvenile detainees took account of such questions as whether the detainees were tried and convicted juveniles, first offenders or habitual offenders due to be serving short or long sentences. In addition, the Juvenile Offenders Act provided that trials of juvenile offenders should be conducted in camera; sanctions would include probation and suspended sentences, under which offenders would be placed in a correctional rehabilitation youth centre where they would be educated with a view to reintegration into society through, for example, community service.

5. A further question related to recourse to the Supreme Court under section 17 of the Constitution in cases involving observance of articles 3 to 16 of the Convention. Such recourse was by means of an application by a person who might feel that his rights, as protected by section 2 of the Constitution, had been violated. Another relevant provision was section 7, which made torture an illegal invasion of the rights of the citizen. Recourse to the Supreme Court was available to a person at any stage of the proceedings. The interpretation of torture under the Constitution was as wide as possible so that a definition, although not present in existing legislation, could always be invoked before the Supreme Court. In his view, the ideal solution would be the adoption of specific legislation which would

make the relevant articles of the Convention part of domestic law. The situation must be remedied and he would make every effort to see that no loopholes were left.

6. The Constitution contained provisions relating to the appointment of senior officers of the Judiciary. Persons recruited to the magistrature must have completed a university education and have three years of experience before they were eligible for appointment. Judges were recruited from the pool of magistrates. Section 77 of the Constitution provided that the Chief Justice was appointed by the President after consultation with the Prime Minister. The senior puisne judge was appointed by the President on the advice of the Chief Justice. Other puisne judges were appointed by the Judicial Legal Service Commission, which was an independent body chaired by the Chief Justice and comprised other judges. The Commission had powers to see that magistrates acted in accordance with their oath to dispense justice; and magistrates were subject to discipline by the Commission. Any complaints against a magistrate were forwarded to the Commission, which would hold a hearing. Provisions regarding the tenure of judges were contained in the Constitution. The complex procedure for the removal of judges was an indication of their independence. They could be removed from office for inability to perform their duties or for misbehaviour. In the event of complaints against judges the President appointed a tribunal consisting of a chairman and two judges. The findings of the tribunal were forwarded to the Judicial Committee of the Privy Council, which made the final decision.

7. Statistics relating to complaints against public officials showed that 15 complaints had been investigated, of which 11 had been referred to a court; 9 persons had been charged. Including 1993 cases, there were currently 18 matters before the court. A person charged was automatically suspended from his functions.

8. Under the Constitution, public officials were subject to the jurisdiction of the Public Service Commission and the Police Service Commission which were independent bodies under the Constitution and not accountable to the Executive. Once a complaint had been made and investigated and a charge had been preferred against a person in authority, the person in question was suspended and a hearing would take place under the chairmanship of a magistrate and two assessors. Their findings would be forwarded to the Commissions.

9. The Labrosse case, mentioned in the report, illustrated how the system worked. The case had involved two young persons who had been found in the middle of the road next to a moped. In the first instance the case had been regarded as one of hit-and-run. Following intense press interest in the matter, more information had become available and the Director of Public Prosecutions had instituted an inquiry under section 111 of the District and Intermediate (Criminal Jurisdictions) Act, which required a magistrate to investigate any offence where he had reasonable grounds to believe that an offence had been committed. In her findings, the magistrate said that she entertained strong doubts as to the veracity of the testimony of the police witnesses and, as a result, two police officers were currently being prosecuted in the Intermediate Court for the offence of "wounds and blows causing death without intention to kill". Non-governmental organizations had

been involved in the case and independent forensic experts had been present when a second autopsy had been performed. The case illustrated how existing procedures worked.

10. In reply to the questions on article 2, he said that torture, as defined in article 1 of the Convention, was not covered under existing legislation. If a public official oppressed a person, he would not be found to have infringed any criminal provisions, but there would be an internal inquiry and the matter would be referred to the Public Service Commission as a case involving gross misconduct during the course of duty.

11. Section 77 of the Criminal Code, to which Mr. Burns had referred, would cover the meaning ascribed to torture under article 1, if it were not for the restrictive provision covering acts committed under the authority of a superior officer. The case would then fall not under article 2 but under articles 1 and 2 together.

12. Regarding article 3, a question has been asked about the situation which would arise if there was a risk of torture in the receiving State. Mauritius had received no requests for extradition subsequent to its signature of the Convention in 1992. A case prior to that date concerned a person alleged to have murdered his wife in France but who had subsequently escaped to Mauritius. France had requested his extradition, which had been refused on the grounds that there was no binding extradition treaty between Mauritius and France. In cases involving requests for extradition in the future, the comments of the judge in that case, quoted in paragraph 35 of the report, would be relevant.

13. The judge had also made reference to the judgment of the European Court in the Soering case, when it had found that the United Kingdom would be violating the guarantees of fundamental rights, including the right to due process, if it extradited Mr. Soering to the United States, where he would be facing a capital charge. The grounds cited were that there was evidence before the court of the cruel treatment and punishment implicit in the long wait on death row to which people sentenced to death in the United States were subject and the conditions of great anxiety and mental torture which they consequently endured during their confinement. It was clear that a request for extradition would not be accepted in Mauritius if there was any risk that the person would face the possibility of torture. Any request for extradition based on politically motivated reasons would not be acceded to by Mauritius.

14. Mr. Burns had asked what would happen to a torturer who had escaped to Mauritius. In such a case the position of Mauritius would be that, in the absence of any law of universality, the person would not be tried but would be extradited if and when a request for extradition was made.

15. With reference to the training of medical personnel he explained how the Mauritian system operated. Medical legal experts, commonly referred to as police medical officers, were attached to the forensic office and performed all investigations alongside the police. There was also a forensic branch which investigated exhibits referred to it in the course of an inquiry. The police medical officers received training relating to court procedures, the interrogation system and legal provisions. In the course of an inquiry the

police could refer cases to the police medical officers, and relatives of the accused could call a private doctor. All torture victims were seen by two medical officers. Doctors had to testify in court regarding any reports they made and as their reputation and credibility were at stake, there were very few cases of abuse of the system. Although no courses existed to train doctors in the applicable legal procedures, as Mauritius was such a small country, they frequently attended court; he did not recollect any case of a doctor having failed to comply with the relevant procedures. He conceded that, in the absence of transparency, abuses were possible and thus vigilance was necessary. Under the Criminal Code and the Medical Council Act, if any doctor, whether a police medical officer or a private doctor, was found guilty of malpractice, he would be prosecuted and struck off the medical register. There had been a suggestion that medical doctors should undergo special training for cases of assault, but the problem was not extensive enough in Mauritius for that to be necessary. The police and the local branches of Amnesty International and other non-governmental organizations held regular seminars. During the recent conference of French-speaking countries, the University of Mauritius had organized a meeting on human rights in which all those concerned in the administration of justice in Mauritius had participated.

16. He would now address a number of questions that had been asked about arrest and pre-trial detention. Mr. Burns had asked in what circumstances the police could arrest a person without a warrant. Section 22 of the District and Intermediate Courts (Criminal Jurisdiction Act) provided that an officer could arrest a suspect without a warrant in all cases where a private individual could so arrest, and also on a reasonable charge made of a crime committed or of dangerous wounds inflicted by the person arrested. That provision was wide enough to cover situations in which there was a reasonable suspicion that a person was committing or about to commit an offence.

17. Once a person had been arrested he must be informed of the reasons for his arrest and, in accordance with the criminal procedure, must have access to his relatives and to a counsel. A notice of rights was posted in all police stations. As to how soon the person was to be brought before a court, Mauritius was governed by the provisions of the Bail Act. He must appear before a magistrate the following day, when a provisional charge would be made; then an inquiry would begin and the individual would be released. In specifically defined exceptional cases, however, he would be detained in custody. That occurred when an inquiry was not complete and his release could hinder its progress, and also in cases of a serious nature, such as those relating to drugs. Various Supreme Court pronouncements had defined the factors to be taken into account by the authorities when considering the release of suspects: they included the seriousness of the offence, the appropriate punishment, the risk that the offender would commit the same offence again, the risk that the suspect would tamper with witnesses and the likelihood of the suspect not appearing at his trial. The Supreme Court had stressed that detention should not be used as a form of disguised punishment when the police did not have sufficient evidence to detain an individual.

18. With reference to a Supreme Court ruling of 1993, he said that there was a duty on the part of the police to inform a person under arrest or in detention that he had the right to consult a legal adviser; to hold otherwise

would be tantamount to putting a retrograde interpretation on the provisions of the Mauritian Constitution regarding the fundamental rights of individuals. The police were subject to the control and authority of the Director of Public Prosecutions, who could request an inquiry if there was a suspicion of abuse by the public authorities. Mauritius was fortunate in having a strong bar, which ensured that the rights of its clients were not infringed, and a strong press, which would highlight any abuse of power by the authorities.

19. On the important issue raised by Mr. Yakovlev of who policed the police, he conceded that justice must not only be done but must also be seen to be done, and he considered pertinent the criticism that the police conducted the inquiries themselves. However, it was important to highlight certain points. It was a special branch of the police under the control and authority of the Director of Public Prosecutions that conducted those inquiries. In addition, the victim had the right to seek redress in court if his rights were infringed. Section 17 of the Constitution provided that the Supreme Court should have original jurisdiction to hear and determine any application made by any person, and could make such orders, issue such writs and given such directions as it considered appropriate for the purpose of enforcing the protection to which the person concerned was entitled. In view of the fact that several criticisms had suggested there should be more transparency, he expressed the hope that the possibility of a completely independent body would be considered in the near future.

20. Referring to Mr. Regmi's question about the death penalty, he said that the Prime Minister of Mauritius had recently made a statement to the effect that the application of the death penalty would be suspended. In fact there had been no executions in Mauritius since 1987. The death penalty was applicable only for the offences of importing or trafficking in drugs and for murder.

21. The question whether the death penalty was an infringement of human rights had been discussed in the courts. In one case the court had expressed the view that the mandatory death penalty for the offence of drug trafficking did not offend section 7 (on torture) of the Mauritian Constitution, and that it was for Parliament to debate the advantages and disadvantages of the death sentence. It had been argued in some cases that the grossly disproportionate nature of the sentence rendered it unconstitutional. However, the Supreme Court had observed that it was a question of degree; a court would not sentence a person to death for importing a small quantity of drugs to share with friends at a party. The matter should be looked at within the Mauritian context, where drug trafficking could undermine the very fabric of society.

22. With regard to Mr. Burns' question about the Ombudsman, he referred to the Mauritian Constitution, which provided that the Ombudsman would investigate any complaints brought before him and would carry out an investigation and subsequently determine sanctions. He could refer the matter to the police for further investigation, and it usually went to the Director of Public Prosecutions. His referral of the matter to other bodies would trigger the relevant legal procedures. Trials by jury still occurred in cases of a serious nature, such as those relating to manslaughter and murder. Trials relating to drug charges were conducted by a sole judge owing to their frequency.

23. In reply to Mr. El Ibrashi's question on paragraph 14 of the report (CAT/C/24/Add.3) and the issue of enforcement he said that the provisions of the Convention were of a persuasive character in the courts but were not part of Mauritian legislation. The Supreme Court had decided to try to harmonize Mauritian jurisprudence with international human rights provisions.

24. On the issue of private prosecution as mentioned in paragraph 23 of the report, any individual could have recourse to private prosecution if he considered himself to have been aggrieved by another individual. However, if the Director of Public Prosecutions found that the action was abusive, vexatious or frivolous and in abuse of the court, he would intervene and end the procedure. Private prosecutions were rare.

25. He considered he had already dealt with the issues of complaints against the police and the right to a fair hearing within a reasonable period. With reference to redress before the Supreme Court, as described in paragraph 56 of the report, he said that if a person considered that his rights had been infringed, he could apply to the Supreme Court for redress at any time.

26. As to the distinction between civil and criminal jurisdictions, there was no overlap. Criminal court verdicts could not be used in relation to civil matters. Giving the hypothetical example of a police officer found guilty of torture, he said that if the victim had recourse to the civil court for compensation, the trial would start anew, but the burden of proof would be less. If the civil court found in his favour, he would be granted compensation. The applicable court for compensation claims depended on monetary thresholds but the matter of the assessment of damages came under the sole jurisdiction of the Supreme Court. In practice, if a public official had been convicted of a criminal offence, the Government would offer monetary compensation.

27. On the question of rehabilitation he observed that in Mauritius there was a free health system available to all Mauritian citizens. There was no specialized department for individuals who had suffered torture, but in both hospitals and prisons such persons would be referred to specialists.

28. With reference to the judgement of British courts, he wished to state that those were also of a persuasive nature. The Judicial Committee of the Privy Council did not form part of the British court system. It was a court of appeal which many of the Commonwealth jurisdictions had opted to use as an appellate court. In response to the question why, if Mauritius was a republic, it had access to that court, he said that as Mauritius was so small, 720 square miles in area with a population of only 1 million, it had been felt that having recourse on matters of general public importance to the wisdom of a court which was exposed to the jurisdictions of the various Commonwealth countries was beneficial to the evolution of its legal system. Rather than giving up any of its sovereignty, Mauritius was in fact benefiting from its contact with that court.

29. In reply to a question by Mrs. Iliopoulos-Strangas, he said that elections took place every five years, as provided for in the Constitution. He referred to a section of the Constitution which stated that any bill

relating to the postponement of elections must first be put to a referendum and must be supported by three quarters of the electorate, and in a final vote by all members of the National Assembly.

30. An accused person could have the counsel of his choice; it was the responsibility of the accused person to appear in court with a counsel. For persons who were receiving legal aid there was a list of rotating counsels, and the accused person would be allocated counsel from that list. Before legal aid was provided an investigation was carried out into the person's means.

31. Mr. EL IBRASHI thanked the representative of Mauritius for his excellent clarifications. He wished to return briefly to the matter of compensation. The explanation of the relationship between the jurisdictions of the civil and criminal courts had been clear, but he wished for clarification on a subsequent point that had been mentioned. When talking of a case being presented to the civil court for a compensation claim following the conviction of an offender for criminal assault, the representative of Mauritius had said the outcome of the claim depended on the case being proven. There were two cases of civil liability, either contractual liability or liability based on fault. The form of liability they were speaking of was based on fault. He considered that fault should be the same whether one was speaking of the criminal or the civil court. Once the person had been convicted the fault was automatically present; therefore the civil court's only competence in the case would be to determine the level of compensation. It was the criminal court that considered whether or not there was fault and that decision was binding on the civil court. He asked the Mauritian representative for clarification.

32. Mr. SLIM said he wished to revert to the question of detention in custody and to have further clarification regarding the exceptional cases where a person could be kept in custody for long periods. Usually the person was released on the day following his arrest, but in certain exceptional cases provided for under Mauritian law custody could be extended. He wished to know what the maximum length of time for that custody was, whether it was the public prosecutor or the police that decided on the limit and, if it was the police, whether they had to have the authority of the Director of Public Prosecutions. He presumed that the person detained in custody was kept on police premises. Was the detainee's family informed and, if so, in what precise manner? It was important for the detainee's family to be informed because if torture and cruel treatment were to end, it was important that clandestine detention did not occur and that the detainee had certain rights enabling him to inform his family, and to have access to a lawyer and perhaps also to a doctor for verification whether he had been subjected to torture.

33. Mr. BOOLELL, replying to Mr. El Ibrashi's question, said that a clear distinction obtained between the Mauritian criminal and civil court systems, dating from the French occupation of Africa. Despite the fact that the Mauritian judicial system was broadly based upon the British adversarial system, the Mauritian Civil Code was modelled on that of France. When a criminal court convicted an individual of an offence, the victim of the

offence did not automatically receive compensation. The victim himself must subsequently bring a civil action demonstrating that breaches of the terms of the Civil Code had occurred; only then did he become eligible to receive compensation.

34. In reply to the question by Mr. Slim, he said it should be remembered that the detainee was brought before a judge every 14 days; on those occasions he had the opportunity to lodge a complaint, if he so wished, concerning, for example, his conditions of detention or his lack of access to family or counsel. More importantly, however, the judge was empowered to take action in the event of an abuse of authority. The reasons for the detention of a person not formally charged were, for example, an investigation pending, or the risk that the impartiality of witnesses would be prejudiced. In certain grave cases, an individual could be detained for up to six months while an investigation was under way. The judge could, at his discretion, call the Director of Public Prosecutions and inquire why an investigation had not concluded and why a formal charge had not been lodged against the detainee. Such periods of detention could not, of course, last indefinitely; they were subject to the discretion of the judge.

35. In addition, the Act which guaranteed the right to habeas corpus envisaged that a person so detained could sue for his freedom. If the decision of the court went against the detainee, he could bring his case before the Supreme Court, which would then determine whether or not to release him while the investigation was still pending.

36. The CHAIRMAN thanked the delegation of Mauritius for its statements and the explanations it had provided in response to the points raised by members of the Committee.

The public meeting was suspended at 4.40 p.m. and resumed at 5.15 p.m.

37. The CHAIRMAN read out the following text of the Committee's conclusions on the initial report of Mauritius:

"The Committee against Torture considered the initial report of Mauritius at its 212th and 213th meetings, on 26 April 1995, and adopted the following conclusions and recommendations:

A. Introduction

The Committee thanks the Government of Mauritius for submitting its report in a timely manner and for meeting the guidelines set by the Committee.

The Committee listened with interest to the oral report and the clarifications provided. It also wishes to thank the delegation for its replies and for the spirit of frank cooperation in which the dialogue was conducted.

B. Positive aspects

The Committee welcomes the State party's efforts to revise its Constitution and legislation in order to bring its judicial system into conformity with the provisions of the Convention. Such efforts represent a genuine will to create the conditions necessary for the promotion and protection of human rights and accordingly to prevent the perpetration of torture and of cruel, inhuman and degrading treatment.

It welcomes the existence of the office of the Ombudsman and the possibility of invoking habeas corpus.

C. Subjects of concern

The Committee is nevertheless concerned at allegations, originating from various NGOs, of acts of torture and physical abuse carried out in police premises.

The Committee is also concerned at certain shortcomings in the adoption of adequate measures effectively to prevent and combat torture, and, in particular, the apparent reluctance to conduct investigations and to prosecute the perpetrators of such acts in the national courts.

This situation suggests that the perpetrators of such offences benefit from a certain impunity which prejudices the effective implementation of the provisions of the Convention.

D. Recommendations

The Committee recommends that the State party should make efforts to incorporate the provisions of the Convention into its internal legislation for the adoption and implementation of domestic enforcement measures.

The Committee recommends that the State party should incorporate into its criminal legislation a definition of all forms of torture so as to fully cover all those elements that figure in article 1 of the Convention.

The Committee also recommends that the State party, with a view to ensuring greater protection for persons arrested, should effectively install machinery to ensure systematic surveillance in the premises of all police forces in order to fulfil the undertaking assumed in accordance with article 11 of the Convention.

The Committee further recommends that the State party should continue its efforts to carry out further legislative reforms, with particular regard to prison administration, the length of time persons are kept in police custody, and the right to be examined by a doctor or to receive the visit of a family member.

The Committee recommends that the State party should undertake and promote investigations into all actions by senior police officers with the aim of establishing the truth concerning acts of torture and, in the event that the results of the investigations are positive, causing the persons responsible to be brought before the courts and prescribing and transmitting to the police precise and clear instructions intended to prohibit any act of torture. It recommends that the State party should intensify programmes for the training and information of all persons provided for in article 10. Lastly, the Committee recommends that the State party should take all necessary measures to ensure the effective implementation of article 14 of the Convention with the aim of securing full compensation and rehabilitation for victims of torture or their beneficiaries."

38. Mr. DERONS (Mauritius) thanked the members of the Committee for the efforts they had made to understand the situation in his country. The Committee's conclusions and recommendations would be the subject of careful study in his country with a view to their implementation.

The public meeting rose at 5.25 p.m.